



Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

PART 4

LAND ATTACHMENT AND RESIDUAL ATTACHMENT

CHAPTER 2

ATTACHMENT OF LAND

Land attachment

81 Land attachment

- (1) There is to be a form of diligence over land to be known as land attachment.
- (2) Land attachment is competent to enforce payment of a debt but only if—
 - (a) the debt is constituted by a decree or document of debt;
 - (b) the debtor has been charged to pay the debt;
 - (c) the period for payment specified in the charge has expired without payment being made; and
 - (d) where the debtor is an individual, the creditor has, no earlier than 12 weeks before registering the notice of land attachment, provided the debtor with a debt advice and information package.
- (3) A land attachment is, subject to sections 83(6) and 121(1) of this Act, created at the beginning of the day which falls immediately after the expiry of the period of 28 days beginning with the day or, as the case may be, the last day on which a notice of land attachment in relation to the land is registered.
- (4) During the period of 28 days referred to in subsection (3) above, the notice has effect as if it were an inhibition—
 - (a) registered against the debtor in the Register of Inhibitions; and
 - (b) restricted to the land described in the notice.

- (5) A land attachment—
- (a) confers on the creditor a subordinate real right over the land described in the notice (in this Chapter, the “attached land”); and
 - (b) secures the sum (in this Chapter, the “sum recoverable by the land attachment”) mentioned in subsection (6) below.
- (6) That sum is—
- (a) the sum for the payment of which the charge was served, together with any interest accruing after such service and before the attachment ceases to have effect; and
 - (b) all expenses which are chargeable against the debtor by virtue of the attachment.
- (7) The Scottish Ministers may, by regulations—
- (a) substitute for the period of 28 days referred to in subsection (3) above such other period; and
 - (b) make such amendment of enactments (including this Act) in consequence of such a substitution,
- as they think fit.
- (8) In this Act, “debt advice and information package” means the debt advice and information package referred to in section 10(5) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) (in this Act, the “2002 Act”).

82 Attachable land

- (1) In this Chapter, “land” means—
- (a) land (including buildings and other structures and land covered with water) owned by the debtor; and
 - (b) a long lease of land in relation to which the debtor is the tenant.
- (2) It is not competent to create a land attachment over—
- (a) land—
 - (i) to which a title has never been registered; or
 - (ii) to which the debtor does not have a registered title;
 - (b) a proper liferent in relation to which the debtor is the liferenter; or
 - (c) a long lease which is not assignable.
- (3) Subsection (2)(c) above does not apply to a lease which is assignable only with the consent of the landlord, whether or not it is a condition of the lease that consent must not be withheld unreasonably.

83 Notice of land attachment

- (1) A notice of land attachment must—
- (a) be in (or as nearly as may be in) the form prescribed by Act of Sederunt;
 - (b) describe the land to be attached; and
 - (c) be registered in both—
 - (i) the property register in which title to the land is registered (in this Chapter, the “appropriate property register”); and

Status: This is the original version (as it was originally enacted).

(ii) the Register of Inhibitions.

- (2) It is not competent to register a notice of land attachment unless the sum which the debtor has been charged to pay exceeds the sum mentioned in subsection (3) below.
- (3) That sum is—
 - (a) £3,000; or
 - (b) such other sum as may be prescribed by the Scottish Ministers by regulations.
- (4) It is competent to register a single notice of land attachment in relation to two or more sums which, under separate warrants for diligence in execution, the debtor has been charged to pay.
- (5) The judicial officer must, on or as soon as is reasonably practicable after the day or, as the case may be, the last day on which the notice of land attachment is registered, serve a copy of the notice on—
 - (a) the debtor;
 - (b) any person who owns the land (whether solely or in common with the debtor);
and
 - (c) any tenant under a long lease of the land.
- (6) If, before the expiry of the period of 28 days referred to in section 81(3) of this Act, the creditor does not register a certificate of service on the debtor, the notice of land attachment is, and is deemed always to have been, void.
- (7) Subsection (1) above applies to a certificate of service as it applies to a notice of land attachment.